

How to Apply for a Pardon

State of California Office of the Governor

Statement of Philosophy

A Governor's pardon is an honor traditionally granted only to individuals who have demonstrated exemplary behavior following conviction for a felony, or in some cases for a misdemeanor. A pardon will not be granted unless it has been earned. Obtaining a pardon is a distinct achievement based upon proof of a useful, productive and law-abiding life following conviction. The Governor has complete discretion in deciding whether to grant a pardon. A pardon is not granted to every person who applies.

Absent extraordinary and compelling circumstances, an application will not be considered unless the applicant has been discharged from probation or parole for at least ten years without further criminal activity during that period. The ten-year rule may be waived in truly exceptional circumstances, if the applicant can demonstrate a specific need for the pardon.

Pardons

Any person who has been convicted in California of a felony, or a misdemeanor sex offense specified in Penal Code section 290, the accusatory pleading of which has been dismissed pursuant to Penal Code section 1203.4, may apply to the Governor for a pardon. In most cases, the first step in applying is to obtain a Certificate of Rehabilitation from the superior court in the county where the applicant currently resides. All other cases are by way of a direct or "traditional pardon" application. The procedure utilized will depend on the circumstances of each applicant, as explained below.

Once an application is filed under either procedure, the case is referred to the Board of Prison Terms for investigation. The Board may contact the district attorney, investigating law enforcement agency and other persons with relevant information on the applicant.

No fee is charged for applying for a pardon.

Effect of a Pardon

A pardon does not seal the individual's criminal record, and the pardon is itself a public record. When a pardon is granted, the California Department of Justice and the Federal Bureau of Investigation are notified so that they may update their records on the applicant. The pardon is filed with the Secretary of State, reported to the Legislature, and is a public record.

Restoration of Rights

The most frequent reasons for requesting a pardon are for personal satisfaction and for licensing, bonding or other employment purposes.

A pardon does not seal or expunge the record of the conviction. (Penal Code sec. 4852.17.) If the person is subsequently convicted of a new offense, the prior conviction may be considered even after a pardon has been granted. A person who has been pardoned cannot say that he or she has no record of arrests or convictions. However, the person can say that he or she has been convicted and pardoned.

A pardon is not necessary to vote. An individual convicted of a felony becomes eligible to vote in California after successful discharge from probation or parole. (California Constitution, art. 11, sec. 4.) A person who receives a pardon may serve on a jury. (Code of Civil Procedure sec. 203(a)(5) and Penal Code sec. 4852.17.)

A person convicted of a felony who receives a full and unconditional pardon may be employed as a state parole officer or as a county probation officer but cannot otherwise be employed as a peace officer. (Gov. Code sec. 1029.)

A person convicted of a felony cannot own or possess firearms. (Penal Code sec. 12021.) If the individual receives a full and unconditional pardon, he or she may own or possess any type of weapon that may lawfully be possessed by others in California -- unless the person was convicted of an offense that involved the use of a dangerous weapon. A California pardon does not necessarily permit the possession of weapons under the laws of another state or the federal government. The law governing the right to own or possess firearms can be found in Penal Code section 4854.

The granting of a pardon does not prevent some licensing agencies from still considering the conviction in determining whether a license should be granted to practice certain professions. The law regarding licensing determinations can be found in Penal Code section 4853.

The Governor of California cannot grant a pardon for a conviction suffered in another jurisdiction, such as another state or a federal proceeding. A person convicted in another state must apply for a pardon in that state. Federal pardon information can be obtained from the Pardon Attorney, U.S. Department of Justice, 500 First Street Northwest, Washington, D.C. 20530.

Certificate of Rehabilitation

A Certificate of Rehabilitation is a court order declaring that a person convicted of a felony is now rehabilitated. If a petition for a Certificate of Rehabilitation is granted, it is forwarded to the Governor by the court and constitutes the application for a pardon. The

laws pertaining to the Certificate of Rehabilitation can be found in Penal Code sections 4852.01 to 4852.21. Receipt of a Certificate of Rehabilitation does not guarantee that a pardon will be granted.

Generally, any person convicted of a felony who still resides in California may apply to the superior court in his or her county of residence for a Certificate of Rehabilitation, provided that he or she meets the requirements of demonstrated rehabilitation required by law. (Penal Code sec. 4852.06.)

Special laws apply to those convicted of sex offenses. Persons convicted of misdemeanor sex offenses specified in Penal Code section 290 may apply if the conviction has been dismissed pursuant to Penal Code section 1203.4. Persons convicted of felony offenses under Penal Code section 286(c), 288, 288a(c), 288.5, or 289(j) are not eligible for a Certificate of Rehabilitation. A Certificate of Rehabilitation relieves those convicted of some offenses from having to register as a sex offender under Penal Code section 290. For more information on 290 registration requirements, contact the California Department of Justice, Sexual Registration Unit.

Who May Apply

You are eligible to apply for a Certificate of Rehabilitation if you:

1. Were convicted of a felony and served your sentence in a California prison; and
 - Were discharged or released on parole prior to May 13, 1943; and
 - Have not been incarcerated in a state penal institution since release; and
 - Have resided for three years in California immediately prior to filing the petition.

OR

2. Were convicted of a felony, or a misdemeanor sex offense specified in Penal Code section 290 which was dismissed pursuant to Penal Code section 1203.4; and
 - Have been discharged from custody, parole or probation; and
 - Have not been incarcerated in any penal institution, jail or agency since release; and
 - Are not on probation for the commission of any other felony; and
 - Have resided for five years in California immediately prior to filing the petition.

OR

3. Were convicted of a felony after May 13, 1943; and
 - Were sentenced to state prison; and

- Were discharged from custody or released on parole; and
- Have resided for five years in California immediately prior to filing the petition.

Persons who are not eligible to apply for a Certificate of Rehabilitation include:

1. Those who do not meet the above requirements; or
2. Those who were convicted of misdemeanors, except those convicted of a misdemeanor sex offense as discussed above; or
3. Those who were convicted of sex offenses under Penal Code sections 286(c), 288, 288a(c), 288.5, or 289(j); or
4. Those who are serving a mandatory life parole; or
5. Those committed to prison under a death sentence; or
6. Those persons in the military service.

When to Apply

Persons eligible for a Certificate of Rehabilitation may file a petition with the superior court in their county of residence once they have completed the period of rehabilitation. The period of rehabilitation begins to run upon discharge from incarceration or upon release on probation or parole. The period of rehabilitation requires five years residence in California, **PLUS**:

1. Four years for persons convicted of Penal Code sections 187, 209, 219, 4500, or 12310, or Military and Veterans Code section 1672(a), or any other offense which carries a life sentence; or
2. Five years for any person convicted of any offense for which sex offender registration is required pursuant to Penal Code section 290, except for convictions for violations of subdivision (b), (c), or (d) of section 311.2, or of section 311.3, 311.10, or 314. For those convictions, an additional two years is required.
3. Two years for any persons convicted of any offense not listed above and which does not carry a life sentence; or
4. Any additional years ordered by the court if the person served consecutive sentences.

Procedure for Applying

The petition for Certificate of Rehabilitation must be filed in the superior court of the applicant's current county of residence. (Penal Code sec. 4852.06.) The Petition for Certificate of Rehabilitation can usually be obtained from the court clerk, probation department or public defender's office. The petitioner is required to notify the district attorney in their county of residence and the district attorney of each county in which the petitioner was convicted of a felony. The notice must identify all crimes for which the person is requesting a Certificate of Rehabilitation. The form for sending these notices can also be obtained from the court clerk, probation department or public defender.

Persons applying for the Certificate of Rehabilitation are entitled to assistance in processing their petitions from the county probation offices, state parole agents and, for persons under the age of 30, from the Youth Authority. The person may be represented by counsel. If the person does not have counsel, he or she may be represented by the public defender, the probation department or the court may assign counsel. (Penal Code section 4852.08)

Once a petition is filed, the court will schedule a hearing. Before the hearing, the court may require an investigation by the district attorney. At the hearing, the court may require testimony and records pertaining to the petitioner, including information about the conviction offense and the person's conduct while incarcerated and since release.

If the court finds that the petitioner has demonstrated rehabilitation, the court may declare that the petitioner is rehabilitated. A certified copy of the Certificate of Rehabilitation issued by the court is transmitted to the Governor and becomes the application for a pardon.

Upon receipt of the application, the Governor may request that the Board of Prison Terms conduct a further investigation. Following review of the Board's report, the Governor may grant the pardon. If the petitioner has been convicted of more than one felony in separate proceedings, the California Supreme Court must first approve granting a pardon.

Traditional Pardon

The traditional pardon procedure is available to those who are not eligible for a Certificate of Rehabilitation. This procedure is used primarily by those who were convicted of felonies in California and now reside out of the state. The traditional pardon procedure is also available to individuals who are not eligible for a Certificate of Rehabilitation because they have been convicted of sex offenses under Penal Code sections 286(c), 288, 288a(c), 288.5, or 289(j), and those convicted of misdemeanor offenses. The traditional pardon procedure is covered by Penal Code sections 4800-4813.

Applicants for a traditional pardon must write directly to the Governor's Office to request an application at the following address:

**Governor's Office
State Capitol
Attention: Legal Affairs Secretary
Sacramento, CA 95814**

The applicant should complete the Application for Executive Clemency form and return it to the Governor's Office. In addition, the applicant must send Notice of Intention to Apply for Executive Clemency to the district attorney of each county in which the applicant was convicted of a felony

When the application is returned to the Governor's Office, if it appears that a pardon may be warranted, the application will be sent to the Board of Prison Terms for investigation. After investigation, the case is presented to the Board for a recommendation to the Governor whether a pardon should be granted. The applicant is notified of when the Board will consider the case, and is given the opportunity to forward any additional information. The Board's recommendation is sent to the Governor and the applicant is notified.

If the applicant has been convicted of more than one felony in separate proceedings, the California Supreme Court must also approve granting a pardon.

As with those who apply by way of a Certificate of Rehabilitation, there is no requirement that the Governor issue a pardon, and the length of time needed for the completion of the pardon process cannot be predicted.

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